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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/014,076	01/27/1998	MAX A. FEDOR	D-1056 DIV3	4092

28995 7590 05/24/2007
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EXAMINER

BUTLER, MICHAEL E

ART UNIT	PAPER NUMBER
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3653

MAIL DATE	DELIVERY MODE
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05/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. This action is in response to the affidavit filed 5/19/2006 and forwarded to the examiner 3/21/07, the affidavit filed concurrent with a set of petitions. There is no evidence in the file wrapper whether any petition decision has been completed prompting the forwarding to the examiner or whether the petition deciding entity has deemed the examiner should take action before deciding the petition.

Response to Substituted Affidavit

2. Applicant's substitution of an affidavit of 5/19/06 for purposes of rectifying the problems of the affidavit submitted 8/30/2000 is acknowledged.

However, the inventorship on the new substituted affidavit does not match the inventors on the declaration and fails to rebut the concerns previously raised by the Board. As previously required on the 105 requirement mailed 12/19/2005 it is necessary to identify the respective inventors on each claim in order to determine if the correct inventorship has been claimed in the application or affidavit. It is necessary to determine the identity of the inventors of the claims not identified in recent and earlier affidavits.

As the accompanying identification has been refused, proper inventorship can not be confirmed, so the affidavit under 37 C.F.R. 1.131 is rejected for failure to include the proper inventorship.

Accordingly, the affidavit submitted 5/19/2006 is defective for failure to include the proper inventors.

Non-Responsive

3. It was necessary to identify the inventors of each respective claim to rebut or confirm the Board's concerns on the affidavit-declaration inconsistency.

Art Unit: 3653

Applicant's refusal to identify the inventors of each claim in his response of 5/19/2006 is nonresponsive to the requirement prompted by the Board assertion of a defect in the affidavit and /or declaration. Applicant's identification of only the same sole inventor with respect to claims 38 and 48 as in the earlier affidavit leaves unaddressed the same deficiency that the Board has previously articulated.

Accordingly, applicant's refusal to identify the inventorship is nonresponsive to the requirement prompted by the Board in the remand of 9/15/2005.

As petitions were filed on 5/19/2006, resolution of the application jurisdiction is pending contingent upon the status of the application which is in turn contingent upon determination of petition decisions by those portion(s) of the Office having jurisdiction to decide applicant's petitions.

Art Unit: 3653

Conclusion

4. Regarding applicant's inquiry on the warning on priority: At least one common inventor is needed between applications for a proper priority claim.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEK
5/16/07

David H. Bollinger
DAVID H. BOLLINGER
PRIMARY EXAMINER 5/21/07